



September 21, 2009

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: MB Docket Nos. 09-52, 07-294, 04-233

Dear Secretary Dortch:

On September 17, 2009 Ms. Carol Pierson, President of the National Federation of Community Broadcasters ("NFCB") met with Ms. Sherrese Smith of Chairman Genachowski's office. On September 18, 2009 she met with Commissioner Mignon Clyburn and her advisor Rick Kaplan; Commissioner Michael Copps and his advisor Jamila-Bess Johnson; Bill Freedman of Commissioner Baker's office; and Commissioner Robert McDowell and his advisor Rosemary Harold. Also attending the meeting were Geoffrey Blackwell, NFCB board member and policy chair, and Cheryl Leanza, consultant to NFCB. NFCB distributed the attached hand-outs and identified several opportunities for Commission action.

The details of Ms. Pierson's advocacy are outlined extensively in the attachments to this letter. In particular, Ms. Pierson emphasized NFCB's interest in a tribal preference as part of the 307(b) process, as proposed in MB Docket 09-52. Ms. Pierson asked that the Commission adopt the preference prior to resolving all the issues in the docket. Mr. Blackwell explained that a preference for tribal governments would not be implicated by the *Adarand* decisions because tribal governments are political, not ethnic, minorities. He suggested further analysis of these issues would likely be considered by the FCC's Diversity Federal Advisory Committee.

Ms. Pierson welcomed the Commission's proposals to expand low power radio and the recent window for new full-power noncommercial stations. She encouraged the Bureau to quickly move the remaining full-power applicants through the point system.

Ms. Pierson also asked that the Commission act on NFCB's proposal, in docket MB Docket 09-52, to open a new proceeding considering more broadly the application of section 307(b) of the Communications Act in the noncommercial band. In particular, Ms. Pierson was concerned that the current process was not appropriate because currently section 307(b) favors the sheer size of applicants without reference to any other qualification, and is a dispositive threshold preference.

Moreover, the strength of the preference leads to gaming, as outlined in NFCB's comments in the rural radio proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl A. Leanza". The signature is fluid and cursive, with the first name "Cheryl" being more prominent.

Cheryl A. Leanza
President
A Learned Hand Consulting, LLC

enclosure



**National Federation of Community Broadcasters
Federal Communications Commission meetings Sept. 16-18, 2009**

Overview of NFCB

NFCB represents over 200 public radio stations. NFCB members present a unique voice in broadcasting. For example, nearly half of NFCB's member stations are radio services controlled by people of color. Forty-one percent serve rural communities. Its members typically rely extensively on volunteers for their on-air personnel. Although some of NFCB members carry National Public Radio programming, local programming makes up the majority of community radio schedules. Approximately 40 percent of NFCB members have budgets under \$200,000 and the majority of its members have three or fewer employees. Despite small budgets, NFCB members produce unique and compelling content. For example, many stations feature live performances of local music groups and most community radio station produce local news or public affairs programs covering political issues and local events. Some stations broadcast some or all of their programming in Spanish, Native languages or other languages of significant populations that have no local radio service in their language or about their issues.

Key Points

- Many, many people who are not served well on broadcasting. While NFCB members attempt to serve the many unserved audiences in their communities, more opportunities are needed to adequately serve local communities.
- NFCB members are intensely committed to the same policy goals as the Commission -- localism, diversity and public service. Thus, NFCB members are willing to comply with Commission rules when they serve these important values. At the same time NFCB must speak up when proposed regulatory burdens are too great because many NFCB stations are very small.
- Local community radio broadcasting continues to be an important vehicle for emergency information, local democratic discourse and journalism at a time when this information is becoming more important.



**National Federation of Community Broadcasters
Advance Briefing Materials for Federal Communications Commission staff in preparation
for meetings Sept. 15-18, 2009**

Ms. Carol Pierson, President of the National Federation of Community Broadcasters (“NFCB”) would like to use this meeting to introduce NFCB and its members, and to highlight a number of issues of concern to NFCB. Because NFCB is a small, non-profit organization located on the west coast, Ms. Pierson particularly appreciates your willingness to meet during the time she will be in Washington DC.

We hope that this meeting will be as much in service to you as it is to our agenda, particularly with respect to some of the more nuanced or technical proceedings before the Commission. We are happy to get into as much or as little detail as you wish with respect to the issues described below. We are also pleased to provide some additional background on these proceedings if that is useful. NFCB’s comments in these proceedings are attached.

Overview of NFCB. NFCB represents over 200 public radio stations. NFCB members present a unique voice in broadcasting. For example, nearly half of NFCB’s member stations are radio services controlled by people of color. Forty-one percent serve rural communities. Its members typically rely extensively on volunteers for their on-air personnel. While many members are affiliates of National Public Radio, many are not. NFCB members are intensely committed to the same policy goals as the Commission -- localism, diversity and public service. This means that NFCB is willing to support some Commission proposals that might be opposed by other broadcasters because of the strength of its commitment to these goals (for example, NFCB supports full implementation of low power radio). On the other hand, because NFCB stations are often very small, NFCB must speak up when proposed regulatory burdens are too great. NFCB is willing and able to be a resource to Commission staff as they try to winnow through competing arguments in proceedings balancing regulatory burdens and public interest obligations of broadcasters.

Key pending issues before the Commission.

- ❖ **Adopt a preference for tribal applications for radio stations immediately, without waiting for the full proceeding to be completed, MB Docket 09-52.** This proposal by the Commission received support and no opposition on the record and should be adopted immediately. This is an easy way for the Commission to quickly take concrete action in support of media diversity while other issues are considered in more complex ownership proceedings.
- ❖ **Immediately freeze low power television and digital TV translator applications for channels 2-6 so that some spectrum can be more productively allocated for noncommercial radio, MB Docket No. 07-294, et. al.** This request is urgent, as the filing window began on August 25, 2009 and applications on this spectrum are accumulating now.

Although the Commission has expressed concern about the appropriateness of this spectrum for digital television and has issued its own pending proposals to use this spectrum for FM broadcasting, the Commission has nonetheless opened a window for first-come, first-served LPTV and digital television translators applications that include this spectrum. Failure by the Commission to freeze this small portion of the application window will preclude the Commission from considering appropriate spectrum allocation after the DTV transition. Since spectrum is a scarce resource and important for every aspect of the Commission's agenda including broadband deployment, making an irreversible mistake here seems unwarranted.

- ❖ **Initiate a proceeding to reconsider implementation of §307(b) allocation rules for public radio, MB Docket 09-52.** NFCB supports the FCC's goals of reforming preferences that are often abused by licensees. In particular, NFCB believes the proposal submitted in comments suggesting that, for allocation purposes, the largest community within a service contour be treated as a community of license. NFCB's proposal to create a rebuttable presumption will address concerns raised by stations owned by people of color. In addition, NFCB asked the Commission to initiate a similar proceeding to consider the impact of §307(b) in noncommercial radio. The current policy of favoring the largest number of listeners without regard to service to a community of license does not make sense and should be reviewed.
- ❖ **Adopt appropriate "ownership" reporting obligations for noncommercial broadcasters, MB Docket No. 07-294 *et al.*** NFCB supports the Commission's proposal to collect demographic information about the boards of directors that control noncommercial radio stations. We suggest some changes to the form to streamline its reporting, and suggest that violations of this rule are treated liberally for the smallest broadcasters. Some of the opposition to this proposal in the noncommercial community originates with a concern about the Commission's tendency to equate non-profit governance with corporate ownership concepts. As such, NFCB strongly encourages the Commission to revise its current staff-level guidance regarding transfers of control for non-stock entities. Changes in individual members of the board of directors of a non-profit organization do not represent transfers of control and the Commission staff should stop treating it as such.
- ❖ **Adopt some localism proposals, but with careful tailoring to avoid burdens and assist broadcasters that currently produce local programming and are fully responsive to their communities, MB Docket No. 04-233.** When the Commission begins to actively consider its localism dockets again, it should grant preferences, in the form of a point system, to broadcasters that based on, specifically: the percentage of locally-produced programming; the number of board members who are residents; whether members of the community will have an opportunity to obtain broadcast time on the station; and whether the applicant will be providing a program format not otherwise available. The Commission should not impose duplicative administratively burdensome
- ❖ **Reform fleeting expletives rules for broadcasters.** The Commission is currently considering how to **proceed** in the face of litigation on the new treatment of fleeting expletives. Once the Commission staff resumes considering alternatives, NFCB hopes to be part of the process. NFCB members have a particular concern in this arena because its members are highly likely to broadcast unconventional material and are highly sensitive to even small fines.